

STATEMENT OF EMERGENCY
902 KAR 2:213E

This emergency administrative regulation is being promulgated to establish actions that the Department for Public Health may take in response to a declared national or state emergency. These actions include enhancing prevention of the spread of the infectious disease COVID-19 by wearing a face covering in public, subject to certain exceptions. According to the Centers for Disease Control and Prevention ("CDC"), the Delta variant is nearly twice as contagious as previous COVID-19 variants, and fully vaccinated people with Delta variant breakthrough infections can spread the virus to others. Hospitalizations from COVID-19 are doubling every two weeks, by far the fastest rate of growth of the pandemic. The surge of hospitalizations of children with COVID-19 is causing children's hospitals to become overwhelmed, with recent CDC data showing an average of 225 children with COVID-19 admitted to U.S. hospitals every day over the past week, which is a 45.7% increase from the prior week in daily new hospitalizations of children age 17 and under. The American Academy of Pediatrics recently reported that more than 93,000 children and teenagers were infected with COVID-19 last week, up 84% from the previous week and five times as many cases as the end of June.

The CDC now recommends universal indoor wearing of face coverings for all teachers, staff, students (age 2 and older), and visitors to schools, regardless of vaccination status. The CDC recommends that all people age 2 and older who are not fully vaccinated should wear a face covering while indoors in childcare settings. The CDC also recommends that fully vaccinated people wear a face covering in public indoor settings in areas of substantial or high transmission.

This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)1. and 4. to meet an imminent threat to public health, safety and welfare, and to protect human health. This emergency administrative regulation will not be replaced by an ordinary administrative regulation as these measures are in direct response to the declared state public health emergency.


Andy Beshear, Governor



Eric C. Friedlander, Secretary
Cabinet for Health and Family Services

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Public Health

3 Division of Epidemiology

4 (New Emergency Administrative Regulation)

5 902 KAR 2:213E. Childcare standards for covering the face in response to declared
6 national or state public health emergency.

7 RELATES TO: KRS 211.180(1), 214.010, 214.645, 333.130

8 STATUTORY AUTHORITY: KRS 12.270(2), 39A.180, 194A.010, 194A.025,
9 194A.050(1), 211.025, 211.180(1), 214.020

10 NECESSITY, FUNCTION, AND CONFORMITY: KRS 214.020 requires the Cabinet
11 for Health and Family Services to take action, promulgate, adopt, and enforce rules and
12 regulations it deems efficient in preventing the introduction or spread of infectious or
13 contagious disease within this state. KRS 211.025 requires the cabinet to perform
14 actions reasonable necessary to protect and improve the health of the people. KRS
15 211.180(1) requires the cabinet to enforce administrative regulations to control
16 communicable diseases. This administrative regulation establishes requirements for
17 face covering in child care settings in response to a declared national or state public
18 health emergency.

19 Section 1. Definition.

20 "Face covering" means a material that covers the nose and mouth and that:

21 (1)(a) Is secured to the head with ties, straps, or loops over the ears; or

- 1 (b) Is wrapped around the lower face;
- 2 (2) May be made of a variety of materials, including cotton, silk, or linen;
- 3 (3) Shall have two (2) or more layers; and
- 4 (4) Shall be factory-made, homemade, or improvised from household items such as a
- 5 scarf, bandana, or t-shirt.

6 Section 2. Personal Protective Equipment (PPE) Requirements. (1) All staff,
7 volunteers, visitors, parents, guardians, and all children age 2 and older who are able to
8 wear a face covering, shall wear a face covering while inside a child care center or
9 family child care home, unless they meet any of the exemption criteria established in
10 subsection (5) of this section;

11 (2) A provider shall make face coverings available to children, parents, guardians,
12 and other adults permitted into the facility.

13 (3)(a) A provider shall require all children (2) years of age or older to wear a face
14 covering;

15 (b) A child who is younger than two (2) years of age shall not wear a face covering
16 due to increased risk of suffocation and strangulation;

17 (c) A face covering lanyard shall be prohibited for all children due to increased risk
18 of suffocation and strangulation.

19 (4) If a child age two (2) or older or an adult refuses to wear a face covering, or face
20 shield as permitted by subsection (1)(c) of this section, the facility may refuse the
21 individual the right to enter the facility.

22 (5) The following shall not be required to wear a face covering:

23 (a) Any person who is sleeping or unconscious, or who cannot otherwise remove

1 the face covering on their own;

2 (b) Any person with a disability, or a physical or mental impairment, that prevents
3 them from safely wearing a face covering;

4 (c) Any person who is deaf or hard of hearing and is actively communicating, or any
5 person who is actively communicating with someone who is deaf or hard of hearing, an
6 is able to maintain a safe distance of six (6) feet from all individuals who are not
7 members of that person's household;

8 (d) Any person engaged in work that a state or federal regulator has concluded
9 would make wearing a face covering a risk to their health or safety;

10 (e) Any person who is seated and actively consuming food or beverage;

11 (f) Any person who is obtaining s service that requires temporary removal of the
12 face covering in order to perform the service;

13 (g) Any person who is required to temporarily remove their face covering to confirm
14 their identity or for security or screening purposes;

15 (h) Any person who is giving a speech or broadcast to an audience and is able to
16 maintain a safe distance of six feet from all individuals who are not members of the
17 person's household;

18 (i) Any person who is in a swimming pool or other body of water indoors;

19 (j) Any person who is actively engaged in exercise indoors in a facility; and

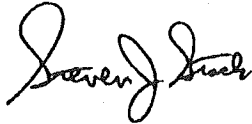
20 (k) Any person who is engaged in a lawful activity where federal or state law
21 prohibits wearing a face covering.

22 Section 3. Effective Date. (1) In accordance with KRS 13A.190, this administrative
23 regulation shall remain in effect until:

- 1 (a) Expiration of the time period established by KRS 13A.190; or
- 2 (b) Withdrawn in accordance with KRS 13A.190(12).
- 3 (2) The Cabinet for Health and Family Services shall regularly consult with the
- 4 Governor's Office, the Centers for Disease Control and Prevention, and other public
- 5 health authorities to determine if this administrative regulation shall be withdrawn prior
- 6 to its expiration under KRS 13A.190.
- 7 Section 4. Reference. Guidance on how to make a face covering at home is available
- 8 at: [https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-to-make-cloth-](https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-to-make-cloth-face-covering.html)
- 9 [face-covering.html](https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-to-make-cloth-face-covering.html).

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REVIEWED:



8-11-21

Dr. Steven J. Stack, MD, MBA Date
Commissioner, Department for Public Health

APPROVED:



8-11-21

Eric C. Friedlander Date
Secretary, Cabinet for Health and Family Services

PUBLIC HEARING AND PUBLIC COMMENT PERIOD:

A public hearing on this administrative regulation shall, if requested, be held on September 27, 2021, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621. Individuals interested in attending this hearing shall notify this agency in writing by September 20, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until September 30, 2021. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. In the event of an emergency, the public hearing will be held using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor in advance of the scheduled hearing. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Specialist, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, KY 40621; Phone: 502-564-6746; Fax: 502-564-7091; CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation: 902 KAR 2:213E

Agency Contact: Julie Brooks, (502) 564-3970, julied.brooks@ky.gov or Krista Quarles, (502) 564-6746, CHFSregs@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for wearing a face covering by teachers, staff, children, and visitors while in a child care center or family child care home.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure the health and safety of the children, teachers, staff, and visitors in child care settings during the current national or state public health emergency. The Centers for Disease Control and Prevention (CDC) now recommends universal indoor wearing of face coverings for all teachers, staff, students (age 2 and older), and visitors to schools, regardless of vaccination status. The CDC recommends that all people age 2 and older who are not fully vaccinated should wear a face covering while indoors in childcare settings. The CDC also recommends that fully vaccinated people wear a face covering in public indoor settings in areas of substantial or high transmission.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050, 194A.010, KRS 194A.025, KRS 211.025 and KRS 214.020 authorize the Cabinet for Health and Family Services to take action to protect the health and welfare of the citizens of the commonwealth and to adopt administrative regulations and to take other action to prevent the spread of disease in the commonwealth.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will reduce the spread of COVID-19 in specialized locations and will protect the health and welfare of the citizens of the commonwealth during the declared national and state public health emergency.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Currently, 1,835 licensed child care centers, and 231 certified family child care homes in Kentucky. The Department for Community Based Services, Division of Child Care, and the Office of the Inspector General, Division of Regulated Child Care, will be impacted as the child care regulating and monitoring agencies, respectively.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in questions (3) will have to take to comply with this administrative regulation or amendment: Certified family child care homes, licensed child care centers, and limited duration child care programs will be required to meet the additional CDC and public health guidance contained in this administrative regulation to prevent the spread of the virus within child care facilities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to the Division of Child Care or the Division of Regulated Child Care. These requirements are consistent with the current CDC guidance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities complying with the requirements of this administrative regulation will reduce the risk of spreading the COVID-19 virus within their facilities and homes and hopefully be able to eliminate or minimize spreading the virus and remain open.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no cost to implement this administrative regulation initially.

(b) On a continuing basis: There will be no ongoing costs for implementation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding will be necessary.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: An increase in fees or funding is not needed to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation does not establish fees.

(9) TIERING: Is tiering applied? (Explain why or why not.) Tiering is not applied as all licensed child care centers and certified family child care homes will be regulated by this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation: 902 KAR 2:213E

Agency Contact: Julie Brooks, (502) 564-3970, julied.brooks@ky.gov or Krista Quarles, (502) 564-6746, CHFSregs@ky.gov

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services, Division of Child Care and Division of Regulated Child Care, and the Department for Public Health are impacted by this administrative regulation. A local government or a school district operating a licensed child care center, in whole or in part, will be impacted.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 12.270(2), 39A.180, 194A.010, 194A.025, 194A.050(1), 211.025, 211.180(1), 211.190(1), 214.020

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation does not generate revenue.

(c) How much will it cost to administer this program for the first year? This administrative regulation will have no impact on costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will have no impact on costs.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:



ANDY BESHEAR
GOVERNOR

EXECUTIVE ORDER

Secretary of State
Frankfort
Kentucky

2021-585
August 10, 2021

STATE OF EMERGENCY

The novel coronavirus (COVID-19) is a respiratory disease that has contributed to the deaths of nearly 615,000 Americans and 7,387 Kentuckians over the past 17 months.

Under the powers provided by the Kentucky Constitution and Kentucky Revised Statutes, including KRS Chapter 39A, I declared by Executive Order 2020-215 on March 6, 2020, that a State of Emergency exists in the Commonwealth.

New cases of and hospitalizations for COVID-19 are increasing in Kentucky and the United States at the fastest rate of growth of the pandemic because of the transmission of the highly contagious Delta variant. According to the Centers for Disease Control and Prevention ("CDC"), the Delta variant is nearly twice as contagious as previous COVID-19 variants, and fully vaccinated people with Delta variant breakthrough infections can spread the virus to others. Hospitalizations from COVID-19 are doubling every two weeks, by far the fastest rate of growth of the pandemic. Healthcare systems are becoming overwhelmed across the United States. As of today, Arkansas' governor reports only eight ICU beds are available in his entire state. A surge of hospitalizations of children with COVID-19 is further causing children's hospitals to become overwhelmed, with recent CDC data showing an average of 192 children with COVID-19 admitted to U.S. hospitals every day over the past week, which is a 45.7% increase from the prior week in daily new hospitalizations of children age 17 and under. The American Academy of Pediatrics recently reported that more than 71,000 children and teenagers were infected with COVID-19 last week, up 84% from the previous week and five times as many cases as the end of June.

In Kentucky, 2,612 new cases of COVID-19 were reported on August 6, 2021 – 525 new cases in age 18 and under – and 976 Kentuckians were hospitalized for COVID-

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Frankfort
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2021-585
August 10, 2021

19, with 286 in intensive care units and 121 people fighting for their lives on ventilators. The positivity rate was 10.46%. Only one month earlier, on July 6, 87 new cases of COVID-19 were reported – only 13 new cases in age 18 and under – 198 people were hospitalized, 69 people were in intensive care units, 34 people were on ventilators, and the positivity rate was 2.65%.

On August 9, 2021, the Commonwealth surpassed 500,000 total cases of COVID-19 and 7,387 Kentuckians had died from disease. The Commonwealth reported 1,301 new cases on August 9, including 269 new cases in people age 18 and under; 1,139 people were hospitalized, with 331 patients in the intensive care unit and 158 on a ventilator. Seven deaths were reported on August 9 and the positivity rate increased to 10.78%. A month earlier, on July 9, 379 new cases were reported, with 89 new cases in people age 18 and under, while 228 people were hospitalized, 68 patients were in intensive care units and 36 patients were on ventilators. The positivity rate was then 3.10%. Nearly four times as many children and teenagers under age 18 in Kentucky – 4,165 – were diagnosed with COVID-19 in July than in June, when 1,197 tested positive.

Without intervention, at this rate in two weeks Kentucky will likely have the highest number of people hospitalized, the highest number of patients in the ICU and the highest number of patients on ventilators at any time of the pandemic.

The most recent CDC data show 119 of 120 Kentucky counties is at substantial or high risk of community transmission of COVID-19. The increases in COVID-19 cases and hospitalizations arise as Kentucky schools begin the academic year.

While Kentucky has had success in administering a first dose of the COVID-19 vaccine to 2,376,891 people, vaccines remain unavailable for approximately 661,500



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Frankfort
Kentucky

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Kentucky children age 11 and under, and less than 34% of all eligible Kentucky children between age 12 and 17 have received their first dose of a vaccine.

The CDC now recommends universal indoor wearing of face coverings for all teachers, staff, students (age 2 and older), and visitors to schools, regardless of vaccination status. The CDC recommends that all people age 2 and older who are not fully vaccinated should wear a face covering while indoors in childcare settings. The CDC also recommends that fully vaccinated people wear a face covering in public indoor settings in areas of substantial or high transmission.

Data from the Boston University School of Public Health show that states with high percentages of citizens wearing face coverings had less than half the COVID-19 infection rate of states with low numbers of citizens wearing face coverings. The Centers for Disease Control and Prevention ("CDC") conducted a study of all 3,142 counties in the United States and found that those counties with mask mandates in effect experienced a statistically significant decrease in daily COVID-19 cases.

The State of Emergency continues in the Commonwealth:

NOW, THEREFORE, I, Andy Beshear, Governor of the Commonwealth of Kentucky, by virtue of authority vested in me pursuant to the Constitution of Kentucky and KRS Chapter 39A, do hereby Order and Direct the following:

1. For the purposes of this order, a "face covering" is a material that covers the nose and mouth and is secured to the head with ties, straps, or loops over the ears, or is wrapped around the lower face. It can be made of a variety of materials, including cotton, silk, or linen, and ideally has two or more layers. Face coverings may be factory-made, homemade, or improvised from household items such as scarfs, bandanas, and t-shirts. Guidance on how to make a face covering at home is available at: <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-to-make-cloth-face-covering.html>.
2. All individuals – all teachers, staff, students, and visitors – must cover their nose and mouth with a face covering when indoors in all public



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and private preschool, Head Start, elementary, middle, and high schools (preschool through grade 12) in Kentucky, including but not limited to inside of vehicles used for transportation such as school buses, regardless of vaccination status.

3. All staff and visitors, and all children age 2 and older who are able to wear a face covering, must cover their nose and mouth with a face covering when indoors in all child care settings in Kentucky, regardless of vaccination status.
4. The following are exempt from wearing face coverings:
 - a. Children who are under age 2;
 - b. Any person who is sleeping or unconscious, or who cannot otherwise remove the face covering on their own;
 - c. Any person with disability, or a physical or mental impairment, that prevents them from safely wearing a face covering;
 - d. Any person who is deaf or hard of hearing and is actively communicating, or any person who is actively communicating with someone who is deaf or hard of hearing, and is able to maintain a safe distance of six feet from all individuals who are not members of that person's household;
 - e. Any person engaged in work that a state or federal regulator has concluded would make wearing a face covering a risk to their health or safety;
 - f. Any person who is seated and actively consuming food or beverage;
 - g. Any person who is obtaining a service that requires temporary removal of the face covering in order to perform the service;
 - h. Any person who is required to temporarily remove their face covering to confirm their identity or for security or screening purposes;



ANDY BESHEAR
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Frankfort
Kentucky

2021-585
August 10, 2021

- i. Any person who is giving a speech or broadcast to an audience and is able to maintain a safe distance of at least six feet from all individuals who are not members of the person's household;
 - j. Any person who is in a swimming pool or other body of water indoors;
 - k. Any person who is actively engaged in exercise while indoors in the settings described in this Order;
 - l. Any person who is engaged in a lawful activity where federal or state law prohibits wearing a face covering.
5. This Order is effective at 4:00 p.m. on August 10, 2021, for a period of 30 days, and is subject to renewal.

A handwritten signature of Andy Beshear in cursive script.

ANDY BESHEAR, Governor
Commonwealth of Kentucky

MICHAEL G. ADAMS
Secretary of State